

SERIAL 09135-SS WEST NILE VIRUS RAMP TEST KITS

DATE OF LAST REVISION: June 01, 2010

CONTRACT END DATE: May 31, 2013

CONTRACT PERIOD THROUGH MAY 31, 2013

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **WEST NILE VIRUS RAMP TEST KITS**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **February 24, 2010 (Effective 06/01/10)**

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

Wes Baysinger, Chief Procurement Officer
Materials Management

CH/df
Attach

Copy to: Materials Management
 Russell Luder, ENVX
 John Townsend, ENVX

(Please remove Serial 07045-SS from your contract notebooks)



SERIAL 09135-SS

This Contract is entered into this 1st day of June, 2010 by and between Maricopa County ("County"), a political subdivision of the State of Arizona, and Adapco, Inc., a Florida corporation ("Contractor") for the purchase of the Ramp West Nile Virus Test Kit ("Products").

1.0 CONTRACT TERM:

- 1.1 This Contract is for an initial term of three (3) years, beginning on the first day of June, 2010 and ending the 31st day of May, 2013 (the "Termination Date"). Upon attainment of the Termination Date or any subsequent Termination Dates, this Contract may be renewed for an additional one (1) year period upon mutual agreement by both the County and the Contractor through May 31, 2010.

2.0 PRICE ADJUSTMENTS:

Any request for fee adjustments must be submitted sixty (60) days prior to the current Contract annual anniversary. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. If County agrees to the adjusted fee, County shall issue written approval of the change. The reasonableness of the request will be determined by comparing the request with the (Consumer Price Index) or by performing a market survey.

3.0 PAYMENTS:

- 3.1 As consideration for performance of the duties described herein, County shall pay Contractor the sum(s) stated in Exhibit "A."

- 3.2 Payment shall be made upon the County's receipt of a properly completed invoice.

3.3 INVOICES:

- 3.3.1 The Contractor shall submit two (2) legible copies of their detailed invoice before payment(s) can be made. At a minimum, the invoice must provide the following information:

- Company name, address and contact
- County bill-to name and contact information
- Contract serial (contract) number
- County purchase order number
- Invoice number and date
- Payment terms
- Date of service or delivery
- Quantity
- Pricing per unit
- Freight (if applicable)
- Extended price
- Total Amount Due

- 3.3.2 Problems regarding billing or invoicing shall be directed to the County as listed on the Purchase Order.
- 3.3.3 Payment shall be made to the Contractor within thirty (30) days of the invoice date by Accounts Payable through the Maricopa County Vendor Express Payment Program. This is an Electronic Funds Transfer (EFT) process. After Award the Contractor shall fill out an EFT Enrollment form located on the County Department of Finance Website as a fillable PDF document (www.maricopa.gov/finance/)
- 3.3.4 EFT payments to the routing and account numbers designated by the Contractor will include the details on the specific invoices that the payment covers. The Contractor is required to discuss remittance delivery capabilities with their designated financial institution for access to those details.

4.0 AVAILABILITY OF FUNDS:

- 4.1 The provisions of this Contract relating to payment for services shall become effective when funds assigned for the purpose of compensating the Contractor as herein provided are actually available to County for disbursement. The County shall be the sole judge and authority in determining the availability of funds under this Contract. County shall keep the Contractor fully informed as to the availability of funds.
- 4.2 If any action is taken by any state agency, Federal department or any other agency or instrumentality to suspend, decrease, or terminate its fiscal obligations under, or in connection with, this Contract, County may amend, suspend, decrease, or terminate its obligations under, or in connection with, this Contract. In the event of termination, County shall be liable for payment only for services rendered prior to the effective date of the termination, provided that such services are performed in accordance with the provisions of this Contract. County shall give written notice of the effective date of any suspension, amendment, or termination under this Section, at least ten (10) days in advance.

5.0 DUTIES:

- 5.1 The Contractor shall provide Ramp West Nile Virus Test Kits as required by the County with a minimum expiration date or usage life of 9 months.
- 5.2 Contractor will stock material sufficient to meet Counties current forecast with a requirement of three months notice for orders exceeding 10 Ramp West Nile Virus Test Kits.
- 5.3 The County shall provide Contractor with a written yearly forecast of anticipated purchases and expected delivery dates by February 5 of each year.
- 5.4 County will provide updates on a monthly basis for any change to the initial forecasted amounts and all forecasts amounts three months out will be considered a legal binding order to which Contractor will secure products for.

6.0 TERMS and CONDITIONS:

6.1 INDEMNIFICATION:

- 6.1.1 To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless County, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions, mistakes or malfeasance relating to the performance of this Contract. Contractor's duty to defend, indemnify and hold harmless County, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is caused by any negligent acts, errors, omissions or mistakes in the performance of this Contract by the Contractor, as well as any person or entity for whose acts, errors, omissions, mistakes or malfeasance Contractor may be legally liable.

6.1.2 To the fullest extent permitted by law, County shall defend, indemnify, and hold harmless Contractor, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions, mistakes or malfeasance relating to the performance of this Contract or use of the Products by the County, its agents, representatives, officers, directors, officials and employees. County's duty to defend, indemnify and hold harmless Contractor, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is caused by any negligent acts, errors, omissions or mistakes in the performance of this Contract by the County, as well as any person or entity for whose acts, errors, omissions, mistakes or malfeasance Contractor may be legally liable.

6.1.3 The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

6.1.4 The scope of this indemnification does not extend to the sole negligence of County.

6.2 WARRANTY

Contractor warrants that the Products, when delivered, will conform with the manufacturer's warranty provided with the Products. Seller shall have no liability for, and makes no warranty with respect to, any packaging or labeling requirements or materials provided or approved by the County (collectively, the "Warranty Criteria"). Contractor's sole and exclusive liability under this warranty will be, at Contractor's option, to replace or credit the County with the price paid for any Products which fail to meet the applicable Warranty Criteria at the time of delivery, provided (i) the County has, provided written notice of same to Contractor with a description of the deficiency (a "Warranty Notice"), (ii) such Products are returned to Contractor at the County's risk and expense and (iii) such returned Products are found to be defective and under warranty (except such part, if any, as cannot easily be returned due to its use in processing to determine the existence of a defective condition or quality, or otherwise). If the Products are found to be defective, Contractor shall pay transportation charges for shipment of the Products to Contractor and return of the replacement Products to County and shall bear risk of loss. In all other cases, County shall be responsible for such charges and risk of loss. All replaced Products will become Contractor's property.

THE RIGHTS CONTAINED IN SECTION 6.2 EXTEND ONLY TO THE COUNTY AND CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OR GUARANTEES OF ANY KIND, EXPRESS OR IMPLIED (OTHER THAN THE IMPLIED WARRANTY OF TITLE), INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF NON-INFRINGEMENT, NON-INTERFERENCE WITH ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES IMPLIED FROM ANY COURSE OF DEALING OR USAGE OF TRADE. THE COUNTY ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY PROVIDED HEREIN NO OTHER WARRANTIES WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT HAVE BEEN MADE TO THE COUNTY BY OR ON BEHALF OF CONTRACTOR OR OTHERWISE FORM THE BASIS FOR THE BARGAIN BETWEEN THE PARTIES.

6.3 LIMITATION OF LIABILITY

EXCEPT IN THE CASE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL CONTRACTOR BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT, THE PRODUCTS OR THE USE OF THE SAME (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST SAVINGS, LOST PROFITS OR BUSINESS INTERRUPTION), EVEN IF CONTRACTOR HAS BEEN INFORMED, IS AWARE, OR SHOULD BE OR HAVE BEEN AWARE, OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY OR ALL REMEDIES AVAILABLE

TO THE COUNTY FAIL OF THEIR ESSENTIAL PURPOSE. IN NO EVENT WILL CONTRACTOR BE LIABLE TO THE COUNTY IN DAMAGES OR OTHERWISE IN EXCESS OF THE PRICE PAID TO CONTRACTOR FOR THE PRODUCT IN QUESTION.

The Contractor shall not be liable in the event that Contractor is unable to supply the County with Products due to circumstances that are beyond the Contractor's control, including, but not limited to, manufacturer supply shortages, Product obsolescence and termination of Contractor's distribution rights by the manufacturer of the Products. In the event that the Contractor can no longer supply the County with Products under this Contract due to circumstances that are beyond the Contractor's control, the Contractor may terminate this contract upon written notice to the County.

6.4 FORCE MAJEURE

Neither Party shall be subject to any liability for delay in performance, or nonperformance, as a result (directly or indirectly) of: (i) fire, flood, accident, explosion, equipment or machinery breakdown, sabotage, strike, or any labor disturbance (regardless of the reasonableness of the demands of labor), civil commotion, riots, invasions, wars (present or future); (ii) acts, restraints, requisitions, regulations, or directions of government, voluntary or mandatory compliance with any request of the United States Government, or voluntary or mandatory compliance with any request for material represented to be for purposes of (directly or indirectly) producing articles for national defense or national defense facilities; (iii) shortage of labor, fuel, power or raw materials, inability to obtain supplies, or inability to obtain or delays of transportation facilities; or (iv) any act of God, or any cause (whether similar or dissimilar to the foregoing) beyond its reasonable control and/or the Contractor's normal sources of supply of any products purchased for resale affecting the production and/or delivery of the Products. If any such disability shall delay any shipment hereunder for more than thirty (30) days, said shipment may be canceled at the Contractor's option.

6.5 PROCUREMENT CARD ORDERING CAPABILITY:

The County may determine to use a MasterCard Procurement Card, to place and make payment for orders under the Contract.

6.6 INTERNET ORDERING CAPABILITY:

The County intends, at its option, to use the Internet to communicate and to place orders under this Contract.

6.7 NOTICES:

All notices given pursuant to the terms of this Contract shall be addressed to:

For County:

Maricopa County
Department of Materials Management
Attn: Director of Purchasing
320 West Lincoln Street
Phoenix, Arizona 85003-2494

For Contractor:

Adapco, Inc.
550 Aero Lane
Sanford, FL 32771

6.8 REQUIREMENTS CONTRACT:

- 6.8.1 Contractor signifies its understanding and agreement by signing this document that this Contract is a requirements contract. This Contract does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when County identifies a need and issues a purchase order or a written notice to proceed.
- 6.8.2 County reserves the right to cancel purchase orders or notice to proceed within a reasonable period of time after issuance. Should a purchase order or notice to proceed be canceled, the County agrees to reimburse the Contractor for actual and documented costs incurred by the Contractor. The County will not reimburse the Contractor for any avoidable costs incurred after receipt of cancellation, or for lost profits, or shipment of product or performance of services prior to issuance of a purchase order or notice to proceed.
- 6.8.3 Purchase orders will be cancelled in writing.

6.9 TERMINATION FOR CONVENIENCE:

The County reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the County without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the County. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

6.10 TERMINATION FOR DEFAULT:

- 6.10.1 In addition to the rights reserved in the Contract, the County may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 6.10.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County on demand.
- 6.10.3 The County may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the County for any excess costs incurred by the County in procuring materials or services in substitution for those due from the Contractor. However, in the event that Contractor is unable to supply the County with Products due to circumstances that are beyond the Contractor's control, including, but not limited to, manufacturer supply shortages, Product obsolescence and termination of Contractor's distribution rights by the manufacturer of the Products, the Contractor shall not be liable to the County for any excess costs incurred by the County in procuring materials or services in substitution for those due from the Contractor.
- 6.10.4 The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

6.11 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. §38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S §38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the Contract.

6.12 OFFSET FOR DAMAGES;

In addition to all other remedies at law or equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance under this contract.

6.13 ADDITIONS/DELETIONS OF SERVICE:

The County reserves the right to add and/or delete products and/or services provided under this Contract. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the proposal price. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the County.

6.14 RELATIONSHIPS:

In the performance of the services described herein, the Contractor shall act solely as an independent contractor, and nothing herein or implied herein shall at any time be construed as to create the relationship of employer and employee, partnership, principal and agent, or joint venture between the District and the Contractor.

6.15 AMENDMENTS:

All amendments to this Contract shall be in writing and approved/signed by both parties. Maricopa County Materials Management shall be responsible for approving all amendments for Maricopa County.

6.16 RETENTION OF RECORDS:

6.16.1 The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for six (6) years after final payment or until after the resolution of any audit questions which could be more than six (6) years, whichever is longer. The County, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said materials.

6.16.2 If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that requested services were provided, the Contractor shall reimburse Maricopa County for the services not so adequately supported and documented.

6.17 AUDIT DISALLOWANCES:

If at any time, County determines that a cost for which payment has been made is a disallowed cost, such as overpayment, County shall notify the Contractor in writing of the disallowance. County shall also state the means of correction, which may be but shall not be limited to

adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

6.18 ALTERNATIVE DISPUTE RESOLUTION:

6.18.1 After the exhaustion of the administrative remedies provided in the Maricopa County Procurement Code, any contract dispute in this matter is subject to compulsory arbitration. Provided the parties participate in the arbitration in good faith, such arbitration is not binding and the parties are entitled to pursue the matter in state or federal court sitting in Maricopa County for a de novo determination on the law and facts. If the parties cannot agree on an arbitrator, each party will designate an arbitrator and those two arbitrators will agree on a third arbitrator. The three arbitrators will then serve as a panel to consider the arbitration. The parties will be equally responsible for the compensation for the arbitrator(s). The hearing, evidence, and procedure will be in accordance with Rule 74 of the Arizona Rules of Civil Procedure. Within ten (10) days of the completion of the hearing the arbitrator(s) shall:

6.18.1.1 Render a decision;

6.18.1.2 Notify the parties that the exhibits are available for retrieval; and

6.18.1.3 Notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice).

6.18.2 Within ten (10) days of the notice of decision, either party may submit to the arbitrator(s) a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs. Within five (5) days of receipt of the foregoing, the opposing party may file objections. Within ten (10) days of receipt of any objections, the arbitrator(s) shall pass upon the objections and prepare a signed award or other final disposition and mail copies to all parties or their counsel.

6.18.3 Any party which has appeared and participated in good faith in the arbitration proceedings may appeal from the award or other final disposition by filing an action in the state or federal court sitting in Maricopa County within twenty (20) days after date of the award or other final disposition. Unless such action is dismissed for failure to prosecute, such action will make the award or other final disposition of the arbitrator(s) a nullity.

6.19 SEVERABILITY:

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

6.20 RIGHTS IN DATA:

The County shall own and have the use of all data and reports resulting from this Contract without additional cost or other restriction except as provided by law. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder.

6.21 INTEGRATION:

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

6.22 VERIFICATION REGARDING COMPLIANCE WITH ARIZONA REVISED STATUTES §41-4401 AND FEDERAL IMMIGRATION LAWS AND REGULATIONS:

6.22.1 By entering into the Contract, the Contractor warrants compliance with the Immigration and Nationality Act (INA using e-verify) and all other federal immigration laws and regulations related to the immigration status of its employees. The contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the Immigration Reform and Control Act of 1986, as amended from time to time, for all employees performing work under the Contract and verify employee compliance using the E-verify system. I-9 forms are available for download at USCIS.GOV.

6.22.2 The County may request verification of compliance for any contractor or subcontractor performing work under the Contract. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

6.23 VERIFICATION REGARDING COMPLIANCE WITH ARIZONA REVISED STATUTES §§35-391.06 AND 35-393.06 BUSINESS RELATIONS WITH SUDAN AND IRAN:

6.23.1 By entering into the Contract, the Contractor certifies it does not have scrutinized business operations in Sudan or Iran. The contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract.

6.23.2 The County may request verification of compliance for any contractor or subcontractor performing work under the Contract. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

6.24 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

6.24.1 The undersigned (authorized official signing for the Contractor) certifies to the best of his or her knowledge and belief, that the Contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

6.24.1.1 are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

6.24.1.2 have not within 3-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

6.24.1.3 are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

6.24.1.4 have not within a 3-year period preceding this Contract had one or more public transaction (Federal, State or local) terminated for cause of default.

6.24.2 Should the Contractor not be able to provide this certification, an explanation as to why should be attached to the Contract.

6.24.3 The Contractor agrees to include, without modification, this clause in all lower tier covered transactions (i.e. transactions with subcontractors) and in all solicitations for lower tier covered transactions related to this Contract.

6.25 GOVERNING LAW:

This Contract shall be governed by the laws of the state of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court or in the United States District Court for the District of Arizona, sitting in Phoenix, Arizona

6.26 ORDER OF PRECEDENCE:

In the event of a conflict in the provisions of this Contract and Contractor's license agreement, if applicable, the terms of this Contract shall prevail.

6.27 INCORPORATION OF DOCUMENTS:

The following is to be attached to and made part of this Contract:

6.27.1 Exhibit A, Pricing;

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR

AUTHORIZED SIGNATURE

Stephen Burt

President and CEO

550 Aero Lane, Sanford, FL 32771
ADDRESS

DATE

MARICOPA COUNTY

CHAIRMAN, BOARD OF SUPERVISORS

DATE

ATTESTED:

CLERK OF THE BOARD

DATE

APPROVED AS TO FORM:

LEGAL COUNSEL

DATE

EXHIBIT A

PRICING

- | | |
|----------------------------------|-------------------|
| 1. Ramp West Nile Virus Test Kit | \$1,522.00 / each |
|----------------------------------|-------------------|